

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MALCOLM WASHINGTON,

Plaintiff,

-v-

8:19-CV-674
(DNH/DJS)

SOPHIE BERGMAN, Assistant District
Attorney; DAVID BUTLER, Attorney at Law;
MICHAEL MCEWAN, Detective, Endicott
Police Department; and ELLIS ERWIN, Chief
Inspector; Endicott Police Department,

Defendants.

APPEARANCES:

MALCOLM WASHINGTON
Plaintiff pro se
83 Edson Street, Lower
Buffalo, NY 14210

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiff Malcolm Washington brought this civil rights action pursuant to 42 U.S.C. § 1983. On July 29, 2019, the Honorable Daniel J. Stewart, United States Magistrate Judge, advised by Report-Recommendation that plaintiff's claims against defendants Butler and Bergman and any claims alleging violations of New York State Penal Law be dismissed with prejudice pursuant to 28 U.S.C. §§ 1915(e) & 1915(A) for failure to state a claim upon which relief may be granted. He further recommended that the remainder of the Complaint

be dismissed without prejudice pursuant to 28 U.S.C. §§ 1915(e) & 1915(A) for failure to state a claim upon which relief may be granted, but that plaintiff be granted leave to amend. No objections to the Report-Recommendation have been filed.

Since the issuance of the Report-Recommendation, plaintiff has filed various other letter motions seeking to add additional defendants and change the demand amount in his Complaint, as well as requesting the appointment of counsel. ECF Nos. 16, 17, 19. Plaintiff also requests a "stay and abeyance" while he awaits decision on his habeas corpus petition and his New York Criminal Procedure Law § 440.10 motion. ECF No. 18.

Based upon a careful review of the entire file and the recommendations of the Magistrate Judge, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

As plaintiff will be permitted to amend the Complaint with regard to all claims except those against defendants Butler and Bergman and any claims alleging violations of New York State Penal Law, plaintiff's letter motions to add defendants or make changes to his Complaint will be denied as moot. Plaintiff will be permitted thirty (30) days from the date of this Decision and Order to file an Amended Complaint addressing the deficiencies identified in the Report-Recommendation and including any other defendants and claims plaintiff wishes.

In his Report-Recommendation, Magistrate Judge Stewart thoroughly addressed and rejected plaintiff's recent request for the appointment of counsel. The circumstances have not changed and plaintiff's request for counsel, that portion of ECF No. 19, will be denied without prejudice. Finally, plaintiff's request for a "stay and abeyance" will be denied.

Therefore, it is

ORDERED that

1. Plaintiff's claims against defendants Butler and Bergman and any claims alleging violations of New York State Penal Law are DISMISSED WITH PREJUDICE;

2. The remainder of the Complaint is DISMISSED WITHOUT PREJUDICE and with leave to amend;

3. Plaintiff's request for the appointment of counsel, that portion of ECF No. 19, is DENIED WITHOUT PREJUDICE;

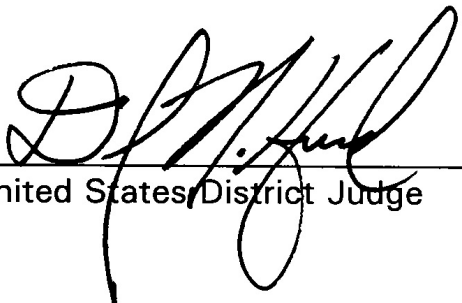
4. Plaintiff's remaining letter requests at ECF Nos. 16, 17, 19, are DENIED as moot in light of plaintiff's opportunity to submit an Amended Complaint;

5. Plaintiff's request for a "stay and abeyance," ECF No. 18, is DENIED;

6. Plaintiff is provided an opportunity to amend his Complaint within thirty (30) days of the date of this Decision and Order to correct the deficiencies identified in the Report-Recommendation;

7. If plaintiff timely files an Amended Complaint within thirty (30) days of the date of this Decision and Order, the file be forwarded to United States Magistrate Judge Daniel J. Stewart for further review; and

8. If plaintiff fails to file an Amended Complaint within thirty (30) days of the date of this Decision and Order, the Complaint be dismissed in its entirety without further order.


United States District Judge

Dated: August 21, 2019
Utica, New York.